

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 498 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

MANJULABEN GOPALSING

Versus

VITHALBHAI CHHAGAN BABAR

Appearance:

1. First Appeal No. 498 of 1988
MS ARCHANA AMIN FOR MS BK VAKHARIA for Appellants.
NOTICE SERVED for Respondent No. 1-3
MR RAJNI H MEHTA for Respondent No. 4
MR KF DALAL for Respondent No. 5

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE D.A.MEHTA

Date of decision: 15/01/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

1. This appeal, under Section 110(D) of the Motor Vehicles Act, is directed against the award dated 28.09.1986 rendered by the Motor Accident Claims Tribunal (Main), Nadiad in Motor Accident Claim Petition No.738 of 1983, dismissing the claim petition preferred by the legal representatives of the deceased driver of motor truck No.GRS 5355.

2. The facts are that on 14-01-1983 at about 2:30 a.m. motor truck bearing No.GRS 5355 driven by Gopalsing Shankarsing Rajput(deceased) was going on Kheda-Nadiad highway from West to East. The said truck was loaded with Iron Bars and was going from Ahmedabad to Vapi, and for that purpose, it had crossed Kheda proceeding towards Nadiad. According to the claimants, along with driver Gopalsing Shankarsing Rajput, one Ramjilal Rameshwar was also in the said truck sitting by the side of the driver. The truck was being driven on its correct side i.e. on Northern part of the road, according to the claimants. The motor truck bearing No.GTB 5637 driven by opponent No.1 came from East and going to West i.e. coming from Nadiad proceeding towards Kheda. According to the claimants, on seeing the motor truck coming from the opposite direction, driver Gopalsing Shankarsing Rajput gave a signal by dimming the lights of his truck and took the vehicle on the left side of the road. At that time the offending vehicle viz. motor truck No.GTB 5637 came and dashed with the truck No.GRS 5355, with the result, driver Gopalsing Shankarsing sustained injuries in the head, he was first taken to Civil Hospital, Nadiad and from there to Civil Hospital, Ahmedabad where he succumbed to the injuries sustained in the said accident. The Insurance Companies i.e. opponent nos.4 and 5 filed written statements qua motor truck No.GRS 5355 and GTB 5637 respectively, disputing the manner of accident and also the claim put forward. The driver and owner of the said truck and the owner of motor truck No.GRS 5355 did not file written statement refuting the averments made in the claim petition. The claimants adduced oral as well as documentary evidence. The Claims Tribunal appreciating the oral as well as documentary evidence, specially panchnama exh.55 pertaining to the place of accident, found deceased Gopalsing Shankarsing, driver of the motor truck No.GRS 5355, solely negligent in the occurrence of the accident and dismissed the claim petition. It is this award dismissing the claim petition which is assailed by the legal representatives of deceased Gopalsing Shankarsing driver of truck no.GRS 5355, by way of the present appeal.

3. It is submitted by Ms.Archana Amin for Ms.B.K.Vakharia, learned Advocate for the appellant, that the driver of the other motor truck viz.GTB 5637 has not been examined before the Claims Tribunal and that the evidence of the driver of the other vehicle was necessary for the purpose of deciding the negligence of opponent no.1, since witness exh.54 has deposed that the deceased Gopalsing Shankarsing on seeing the vehicle from the opposite direction had given the signal and has dimmed the lights of his truck and that the deceased had taken motor truck on the left hand side of the road and at that time the offending vehicle i.e. motor truck no.GTB 5637 came and dashed with the motor truck driven by deceased Gopalsing Shankarsing. It is further submitted that the negligence of opponent no.1 is required to be held on the basis of the evidence and that the deceased Gopalsing Shankarsing in absence of opponent no.1 cannot be held sole negligent in the occurrence of the accident. As against this, it is submitted by Mr.K.F.Dalal, learned Advocate for respondent No.5 that witness exhibit 54 has not witnessed the accident looking to his evidence, and if the lights of the other vehicle were seen by deceased Gopalsing Shankarsing then it was necessary for him to stop his vehicle and allow the other vehicle, coming from the opposite direction, to go and thereafter he should have taken his truck ahead of the stationary trolley which is found on the northern portion of the road as per Panchnama exh.55. It is contended that the evidence on record does not suggest negligence on the part of the driver of the motor truck No.GTB 5637 and there is no illegality or perversity in the finding of fact arrived at by the tribunal.

4. We have perused the oral as well as documentary evidence adduced before the Tribunal since records and proceedings of the Tribunal have been called for, for consideration.

5. It is not disputed that motor truck No.GRS 5355 was going from Ahmedabad to Vapi with iron bars loaded therein and the said motor truck was driven by Gopalsing Shankarsing Rajput. It is also suggested that witness Ramjilal Rameshwar, exhibit 54, was also in the said truck along with the driver. The truck had crossed Kheda and was proceeding towards Nadiad on National Highway which is according to panchnama 55, 22 feet in width North-South. The motor truck No.GTB 5637 came from Nadiad proceeding towards Kheda i.e. from the opposite direction East-West. As per panchnama exh.55, the road was divided into two portion - North and South.

6. The vehicle coming from West and going to East i.e. from Kheda to Nadiad would be required to be driven on Northern portion of the road (i.e. the left hand side of the road) whereas the vehicle coming from East and going to West would be required to be driven on Southern portion of the road which would be left hand side of the road.

7. According to witness Ramjilal Rameshwar, exh.54, the truck was driven by Gopalsing Shankarsing on 14.1.1983 at about 2.30 a.m. proceeding towards Nadiad and at that time one vehicle driven at high speed came from opposite direction with head lights on whereas Gopalsing Shankarsing was driving the vehicle on dim light. Seeing the vehicle coming from opposite direction with full light and on seeing the vehicle coming in such a manner from the opposite direction, Gopalsing Shankarsing took the truck on left hand side of the road and the vehicle from the opposite direction came and gave a dash causing injuries to Gopalsing Shankarsing on the head.

In the cross-examination, it has been suggested to the witness that he did not witness the accident, which suggestion has been denied. It is also stated by the witness that he saw the vehicle coming from the opposite direction from a distance of 1/2 k.m. He has denied the suggestion that after the truck left Ahmedabad, he went to sleep in the rear seat. It has been admitted that the owner of the truck is the relative of the witness; that at the relevant time Gopalsing Shankarsing was driving the truck at a speed of 30-40 Kms.

8. Exhibit 55 is a panchnama pertaining to the place of the accident for the offence under Sections 279 & 337 I.P.C. read with Sections 112 and 116 of the Motor Vehicles Act. Perusal of the Panchnama suggests that on the Northern portion of the road there was a stationary trailer near the place of accident. Witness exhibit 54 does not say about any obstacle on the Northern portion of the road in the form of stationary trolley. Panchnama also suggests that both the vehicles were on the Southern portion of the road facing each other. Due to the said accident, considerable damage is caused to both the vehicles in as much as damage to the motor truck bearing No. GRS 5355 driven by deceased Gopalsing Shankarsing is assessed to the tune of Rs.1 lac (Approx.) whereas the damage caused to truck No.GTB 5637 is assessed to the tune of Rs.75,000/(Approx.). According to witness exh.54, Gopalsing Shankarsing by dimming his headlights

and giving a signal claimed right of way but the offending vehicle coming from the opposite direction dashed with the said truck. If Gopalsing Shankarsing had given a signal by dimming head lights claiming right of way and if opponent no.1 did not accede to the right of way claimed, then in that case, deceased Gopalsing Shankarsing ought to have stopped his truck and allowed the vehicle coming from opposite direction to pass and thereafter overtaken the stationary trolley. In the instant case, even assuming that Gopalsing Shankarsing gave a signal claiming right of way, did not probably bother whether his right of way has been acceded to by the opposite vehicle or not and allowed his vehicle to be driven in the same manner on the wrong side of the road i.e. Southern portion of the road and the collision took place. It is not the say of witness exh.54 that because of stationary trolley/obstruction Gopalsing Shankarsing was required to take his truck on the wrong side of the road i.e. Southern portion of the road. According to witness exhibit 54, he saw the oncoming vehicle from the distance of 1/2 kms. but whether Gopalsing Shankarsing noticed stationary trolley/obstruction on the northern part of the road or whether he saw the vehicle coming from the opposite direction or from what distance if at all, are not known.

9. It may be that Gopalsing Shankarsing must not have noticed the obstruction on the Northern portion of the road till he must have come very near to the trolley and when he saw the obstruction on the Northern portion of the road he must have swerved his truck on the Southern portion of the road which was a wrong side of his and in the process of overtaking the stationary trolley must have collided with the coming vehicle which must be very close by that time. Thus, it appears from the evidence that Gopalsing Shankarsing was not aware of the obstruction on the Northern portion of the road till he must have come very near and unmindful of the vehicle coming from the opposite direction took his vehicle on the southern portion of the road and collided with the vehicle coming from the opposite direction before coming to Northern portion of the road. At midnight when the vehicles are coming from opposite direction, if there is no obstruction in between, both the drivers would see the headlights of the vehicle coming from the opposite direction and they would be on caution. But in the instant case, opponent no.1 was driving his motor truck on his correct side of the road and it is deceased Gopalsing Shankarsing who emerged on the wrong side of the road, may be unaware of the obstruction on the road till very late and unmindful of the vehicle driven on

other side. Be that as it may, panchnama exhibit 55 suggests that Gopalsing Shankarsing was on wrong side of the road, both the vehicles involved in collision were on the southern portion of the road facing each other. Considering panchnama exh.55 it can be said that on Northern portion of the road obstruction in the form of trolley was there and it is because of the presence of the trolley/obstruction on the Northern portion of the road the deceased must have swerved his truck on the Southern portion of the road and met with the accident. Deceased Gopalsing Shankarsing on seeing the obstruction on the Northern portion of the road in the form of trolley should have stopped his truck because normally when there is obstruction on the road and when there is vehicle coming from opposite direction then vehicle intending to overtake the obstruction should stop. Under the circumstances, it cannot be said that deceased opponent no.1 was in any manner negligent in driving the motor truck bearing GTB 5637 when he was on his correct side of the road and it was deceased Gopalsing Shankarsing, the driver of motor truck No.GRS 5355 who came on the incorrect side of the road i.e. southern portion of the road in a negligent manner colliding with the truck driven by opponent no.1.

10. As far as the evidence of P.W.54 is concerned witness has not deposed about the obstruction on Northern portion of the road viz. stationary trolley. Had the witness seen the accident then he would have certainly noticed the trolley before the accident and he would have certainly informed the driver about the said obstruction on the northern portion of the road. The very fact that he does not depose a word about the stationary trolley on the northern portion of the road would be suggestive of the fact that he must not have witnessed the accident. According to him the vehicle coming from the opposite direction came on the left hand side of the road, now if his evidence is accepted it would mean that motor truck No.GTB 5637 came on its wrong side i.e. on the Northern portion of the road and collided with the truck No.GRS 5355 driven by deceased Gopalsing Shankarsing. But as per panchnama exhibit 55 it is not so. Both the trucks at the time of collision were found on the southern portion of the road meaning thereby that the evidence of the witness exhibit 54 is contrary to what is suggested as far as the portion of the road on which the accident took place. In our opinion, the claims Tribunal has rightly not believed the evidence of witness exh.54.

11. The above discussion would reveal that the accident occurred due to sole negligence of deceased

Gopalsing Shankarsing the driver of motor truck No.GRS 5355 as it is only he who could have averted the accident had he not been negligent in driving the vehicle. The damage caused to the vehicles suggest rash manner of driving by deceased Gopalsing Shankarsing.

12. Under the circumstances, on appreciation of evidence, we do not find that the Tribunal has committed any error in recording the finding of sole negligence of deceased Gopalsing Shankarsing in the occurrence of the accident, and therefore, we do not find any reason to interfere with the finding of fact arrived at by the Claims Tribunal and the same is consistent with the evidence on record.

13. The appeal being devoid of substance is liable to be dismissed.

14. In the result, the appeal fails. No order as to costs.

Sd/- Sd/-

(N.G.Nandi, J) (D.A.Mehta, J)

m.m.bhatt